

April 30, 2001 - Scope Ruling on Petroleum Wax Candles from the PRC

A-570-504
Scope Review
Public Document
Enforcement Group III: MER

By Certified Mail, Return Receipt Requested

To All Interested Parties:

On March 15, 2001, the Department of Commerce (the Department) filed on behalf of Barthco Trade Consultants, Inc. (Barthco) a request for a scope ruling on whether its two Mini Loaf, Floating Flower, and Floating Star candles are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC).

In accordance with 19 CFR 351.225(k)(1), the Department has determined that these four candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

Enclosed is a memorandum containing the Department's analysis. We will notify the U.S. Customs Service of this decision. If you have any questions, please contact Matthew Renkey at (202) 482-2312.

Sincerely,

Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII

Enclosure

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MEMORANDUM FOR: Joseph A. Spetrini

Deputy Assistant Secretary
Enforcement Group III

FROM: Barbara E. Tillman
Director
Office of AD/CVD Enforcement VII

SUBJECT: Final Scope Ruling; Antidumping Duty Order on Petroleum Wax Candles From the People's Republic of China (A-570-504); Barthco Trade Consultants, Inc.

Summary

On March 15, 2001,¹ the Department of Commerce (the Department) received a request from Barthco Trade Consultants, Inc. (Barthco) for a scope ruling on its two Mini Loaf, Floating Flower, and Floating Star candles to determine if they are covered by the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC). The National Candle Association (NCA), petitioner in this case, submitted comments on Barthco's request on April 20, 2001. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that Barthco's candles are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

Background

The Department filed Barthco's request for a scope ruling in proper form on March 15, 2001. The National Candle Association's timely comments followed on April 20, 2001.

The regulations governing the Department's antidumping scope determinations are found at 19 CFR § 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the International Trade Commission (the Commission), the initial investigation, and the antidumping duty order. This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR § 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The Department applies these criteria when it is unclear whether the product which is the subject of the scope ruling fits within the product descriptions contained in the petition, the determinations of the Secretary and the Commission, the investigation, and the order. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

In the instant case the Department has evaluated Barthco's request in accordance with 19 CFR 351.225(k)(1); the descriptions of the products contained in the petition, the final determinations of the Secretary and the Commission, the initial investigation, and the antidumping duty order are, in fact, dispositive.

Documents and parts thereof from the underlying investigation deemed relevant by the Department to this scope ruling were made part of the record of this determination and are referenced herein. Documents that were not presented to the Department, or placed by it on the record, do not constitute part of the administrative record for this scope determination.

In its petition of September 4, 1985, the National Candle Association requested that the investigation cover:

[c]andles [which] are made from petroleum wax and contain fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars; votives; and various wax-filled containers. These candles may be scented or unscented ... and are generally used by retail consumers in the home or yard for decorative or lighting purposes (Antidumping Petition, September 4, 1985 at 7).

The Department defined the scope of the investigation in its notice of initiation. This scope language carried forward without change through the preliminary and final determinations of sales at less than fair value and the eventual antidumping duty order:

certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers (Petroleum Wax Candles from the People's Republic of China: Initiation of Antidumping Duty Investigation, 50 FR 39743 (September 30, 1985); see also Preliminary Determination of Sales at Less Than Fair Value, 51 FR 6016 (February 19, 1986), Final Determination, 51 FR 25085 (July 10, 1986), and Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China 51 FR 30686 (August 28, 1986)).

The Commission adopted a similar definition of the "like product" subject to its determinations, noting that the investigations did not include "birthday, birthday numeral and figurine type candles" (Determinations of the Commission (Final), USITC Publication 1888, August 1986, at 4, note 5, and A-2 (Commission Determination)).

Also of relevance to the present scope inquiry is a notice issued to the United States Customs Service in connection with a July 1987 scope determination, which states:

The Department of Commerce has determined that certain novelty candles, such as Christmas novelty candles, are not within the scope of the antidumping duty order on petroleum-wax candles from the People's Republic of China (PRC). Christmas novelty candles are candles specially designed for use only in connection with the Christmas holiday season. This use is clearly indicated by Christmas scenes and symbols depicted in the candle design. Other novelty candles not within the scope of the order include candles having scenes or symbols of other occasions (e.g., religious holidays or special events) depicted in their designs, figurine candles, and candles shaped in the form of identifiable objects (e.g., animals or numerals), (CIE N-212/85, September 21, 1987; Letter from the Director, Office of Compliance, to Burditt, Bowles & Radzius, Ltd., July 13, 1987).

Barthco's Scope Request

Barthco argues that its Mini Loaf candles should be found outside the

scope of the order because, due to the size and dimensions of the candles, they are not the type of candles covered by the Order. Barthco contends that its Floating Flower and Floating Star candles are in the shape of identifiable objects and therefore excluded from the scope of the Order. According to Barthco, these conditions are sufficient to render its products outside the scope of the Order. Barthco included samples of each candle with its scope request.

The National Candle Association's Comments

In its comments the NCA retraces the history of this antidumping duty order, including the import surges and resultant injury suffered by domestic manufacturers which prompted the original September 1985 antidumping petition. Turning specifically to Barthco's Mini Loaf candles, the NCA states that square-shaped candles are considered to be column candles and have been determined to be within the scope of the Order. Similarly, rectangular shaped candles are also considered to be column candles. Barthco's alleged 'Mini Loaf' candles is nothing more than a rectangular shaped column. The bumps on the candle do not cause it to look like any identifiable object. This candle falls within the scope of the Order (NCA Comments at 6).

Regarding the Floating Flower and Floating Star candles, the NCA contends that the alleged "flower" candle is round and does not look like a flower or any other identifiable object. The alleged "star" candle is a straight-sided short pillar candle. Both candles are within the scope of the Order (Id. at 5).

The National Candle Association concludes by noting what it characterizes as the long standing efforts of candle importers to evade or circumvent the order. The order is vital to the survival of the U.S. candle industry. The NCA argues that Barthco is now asking Commerce to narrow the scope of the order so that it excludes everyday candles claiming that they are novelty candles. Commerce does not have the legal authority to narrow the scope of the Order. (Id. at 6).

For the reasons discussed below, the Department cannot subscribe to Barthco's interpretation of the scope of the Order. When determining whether or not a particular product claimed as a novelty candle is within the scope of the antidumping duty order, the Department's first line of inquiry is whether the shape of the candle is one delineated in the language of the Order's scope, i.e., "tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers." With respect to the instant request, we find that the Mini Loaf candles are, in fact, straight-sided, rectangular shaped column candles. Column candles come in a variety of shapes, including those with straight sides (Final Scope Ruling, Mervyn's, Enesco Corporation, and Midwest of Cannon Falls, December 9, 1996, 6-7). Furthermore, the scope of the Order does not place restrictions on the sizes and dimensions of the types of candles named in the Order.

Regarding Barthco's claim that the Floating Flower and Floating Star candles are in the form of identifiable objects, the Department notes that neither the star nor the supposed flower shape is discernable from a majority of angles. In fact, the Floating Flower candles do not clearly resemble flowers; rather they have five rounded sides. Also, the Department has previously found that star shaped candles are within the scope of the Order (Final Scope Ruling, Meijer, Inc., September 30, 1999). Barthco also does not cite any previous scope determinations in support of its arguments. As a result, we disagree with Barthco's claims that the sizes and dimensions of its Mini Loaf candles render them outside the

scope of the Order, or that its Floating Flower and Floating Star candles should be considered under the novelty exemption as identifiable objects.

Barthco argues that its Mini Loaf candles are in sizes and dimensions outside the scope of the Order, and that its Floating Flower and Floating Star novelty candles are in the form of identifiable objects, thus exempting them from the Order. For the reasons discussed above, we disagree. Thus, we find that the candles are within the scope of the Order. This conclusion is consistent with the scope of the investigation and order, as defined in the petition, and the Department's and the Commission's determinations.

Recommendation

Based on the preceding analysis, we recommend the Department find that Barthco's Mini Loaf, Floating Flower, and Floating Star candles, as described above, are within the scope of the antidumping duty order on petroleum wax candles from the PRC.

_____X_____ Agree _____Disagree

If you agree, we will send the attached letter to the interested parties, and will notify the U.S. Customs Service of our determination.

Joseph A. Spetrini
Deputy Assistant Secretary
Enforcement Group III

4/30/01

Date

Attachment